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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,022	02/03/2004	Vic Kane	KLR:8476.0001	5343
152	7590	08/11/2005	EXAMINER	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204-3157			WHITE, DWAYNE J	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/772,022

Applicant(s)

KANE, VIC

Examiner

Dwayne J. White

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-8,10-14,16 and 23-26 is/are rejected.
- 7) ☒ Claim(s) 4,9,15 and 17-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/4/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 3 February 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, no copies of the non patent literature were provided. Therefore those cited references were not considered.

### ***Specification***

The disclosure is objected to because of the following informalities:

On page 3, lines 31 and 32, "generators 20" should be --generators 28--.

On page 5, line 31, "longitudinal axis" is designated as item 94 while on line 32, "surface" is designated as item 94.

On page 6, line 3, "longitudinal axis" is designated as item 94 while on line 2, "surface" is designated as item 94.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 8, 10-12, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg (5,405,246). Goldberg discloses a wind turbine comprising: a vane support 16 arranged for rotation about a vertical axis of rotation; and a vane 14 attached to the vane support including a first end, a second end and a leading and trailing edge connecting the first and second ends approximating a sine wave having a neutral axis substantially parallel to the longitudinal axis of the vane and substantially conforming to a surface of an ellipse. The vane is attached to the vane support proximate the first and second end of the vane and the first and second ends are arranged such that the longitudinal axis of the vane is skewed relative to the axis of rotation of the vane support.

Claims 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Luchuk (3,970,409). Luchuk discloses a wind powered energy converter comprising: a foundation, a substantially vertical tower 16 having a first end and supported by the foundation and a second end; a wind turbine 10 mounted on the tower proximate the second end; a power transmission apparatus having a first connection to the wind turbine and a second connection; a variable mass flywheel 12 comprising a hollow torus arranged for rotation, a fluid and a fluid control to control fluid flow into and out of the torus; and an energy converter 40 for converting rotational energy to another form of energy.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 13, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg in view of Luchuk. Goldberg discloses all of the claimed subject matter except for a variable flywheel and the angle of skew of the longitudinal axis of the vane.

Luchuk teaches a wind turbine using a variable flywheel (see above). Since both Goldberg and Luchuk disclose wind turbine with energy conversion devices, it would have been obvious at the time the invention was made to one of ordinary skill in the art to modify the conversion device of Goldberg, with the teachings of Luchuk, by providing a variable flywheel for the purpose of maximizing utilization of the mechanical energy generated by the wind turbine.

Since applicant has not disclosed that having the vane longitudinal axis skewed at a specific angle solves any stated problem or is for any particular purpose above the fact that the angle improves performance and it appears that the vane of Goldberg would perform equally well with an angle as claimed by applicant, it would have been an obvious matter of design choice to modify the longitudinal axis angle of Goldberg by utilizing the specific angle as claimed for the purpose of improving vane performance.

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## CONCLUSION

### *Allowable Subject Matter*

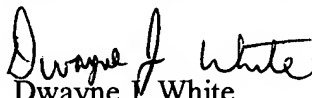
Claims 4, 9, 15 and 17-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Contact Information*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne J. White whose telephone number is (571) 272-4825. The examiner can normally be reached on 7:00 am to 4 pm T-F and alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Dwayne J. White  
Patent Examiner  
Art Unit 3745

DJW

  
EDWARD K. LOOK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700  
8/8/05